

21 C.J.S. Courts § 224

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Courts

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VI. Rules of Adjudication, Decisions, and Opinions

B. Stare Decisis

4. Dicta

§ 224. Persuasive force

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Dictum may have some persuasive force, such as if it has been frequently repeated or incorporated into the court's syllabus.

Dictum may be persuasive and useful¹ and need not be wholly disregarded.² It is entitled to respectful consideration, as expressing the view of the judge,³ and may be followed if sufficiently persuasive⁴ because of the soundness of its reasoning.⁵ There is some authority that a dictum of a court of last resort should be regarded as tantamount to a decision, and binding, in the absence of a contrary decision of that court,⁶ or at least that it be given adequate deference and not be summarily disregarded.⁷ Dicta from the United States Supreme Court is not something to be lightly cast aside but is of considerable persuasive value.⁸ Expressions that go beyond the case may be respected but do not control the judgment in a later case that presents the same point.⁹

Although mere repetition does not elevate obiter dicta to the level of binding precedent,¹⁰ approval of dicta in current decisions may ultimately clothe it with the same, or substantially the same, strength and importance attached to precedents,¹¹ especially if the dicta involve the construction of a statute that has remained substantially the same.¹²

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Footnotes

- 1 U.S.—*Adams v. United States*, 2016 WL 1069071 (Ct. Fed. Cl. 2016).

Ariz.—*Alejandro v. Harrison*, 223 Ariz. 21, 219 P.3d 231 (Ct. App. Div. 1 2009).

Ark.—*Burnette v. Perkins & Associates*, 343 Ark. 237, 33 S.W.3d 145 (2000).
- 2 Cal.—*Mendoza v. Easton Gas Co.*, 197 Cal. App. 3d 781, 243 Cal. Rptr. 136 (5th Dist. 1988).

Wash.—*Lee v. Sauvage*, 38 Wash. App. 699, 689 P.2d 404 (Div. 1 1984).
- 3 U.S.—*City of Aurora, Colorado v. Bechtel Corp.*, 599 F.2d 382 (10th Cir. 1979); *Young v. New Process Steel, LP*, 419 F.3d 1201 (11th Cir. 2005).

Fla.—*Continental Assur. Co. v. Carroll*, 485 So. 2d 406 (Fla. 1986).

Mo.—*State ex rel. Dunlap v. Higbee*, 328 Mo. 1066, 43 S.W.2d 825 (1931).

Pa.—*In re Shelley*, 332 Pa. 358, 2 A.2d 809 (1938).
- 4 U.S.—*Humphrey's Ex'r v. U.S.*, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935); *Drummond Co., Inc. v. Terrance P. Collingsworth, Conrad & Scherer, LLP*, 2016 WL 1319743 (11th Cir. 2016).

Only to extent it remains analytically persuasive
Cal.—*People v. Mendoza*, 23 Cal. 4th 896, 98 Cal. Rptr. 2d 431, 4 P.3d 265 (2000).

Vacated opinion
An intermediate appellate court's opinion, which was reversed or vacated in its entirety by a higher court on another ground, may, depending upon the strength of its reasoning, constitute some persuasive authority, in the same sense as other dicta, but it is nonetheless dicta because it no longer supports or reflects a viable appellate judgment.

Md.—*West v. State*, 369 Md. 150, 797 A.2d 1278 (2002).
- 5 Or.—*Halperin v. Pitts*, 352 Or. 482, 287 P.3d 1069 (2012).
- 6 Ill.—*People v. Williams*, 204 Ill. 2d 191, 273 Ill. Dec. 250, 788 N.E.2d 1126 (2003).

N.J.—*Kutschinski v. Thompson*, 101 N.J. Eq. 649, 138 A. 569 (Ch. 1927).
- 7 N.M.—*State v. Johnson*, 2001-NMSC-001, 130 N.M. 6, 15 P.3d 1233 (2000).
- 8 U.S.—*F.E.B. Corp. v. U.S.*, 2016 WL 1179951 (11th Cir. 2016).
- 9 N.C.—*State v. Jackson*, 353 N.C. 495, 546 S.E.2d 570 (2001).
- 10 Pa.—*Com. v. Singley*, 582 Pa. 5, 868 A.2d 403 (2005).
- 11 N.J.—*McHugh v. Spotts*, 121 N.J.L. 447, 3 A.2d 141 (N.J. Sup. Ct. 1938).

Okla.—*Howard v. Webb*, 1977 OK 68, 570 P.2d 42 (Okla. 1977).

Wis.—*Milwaukee Auto. Ins. Co., Ltd., Mutual v. Felten*, 229 Wis. 29, 281 N.W. 637 (1938).
- 12 U.S.—*Republic Creosoting Co. v. Boldt Const. Co.*, 38 F.2d 739 (C.C.A. 6th Cir. 1930).

N.J.—*McHugh v. Spotts*, 121 N.J.L. 447, 3 A.2d 141 (N.J. Sup. Ct. 1938).

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